

systems, rail integrity warning systems, switch position monitors and indicators, trespasser prevention technology, and highway-rail grade crossing warning and protection technology; and

(ii) The processes described in paragraph (r)(2)(ii) of this section to the technologies identified by the analysis under paragraph (r)(3)(i) of this section.

(4) If a railroad decides to implement any of the technologies identified in paragraph (r)(3) of this section, in the technology analysis and implementation plan in the SSP plan, the railroad shall:

(i) Describe how it will develop, adopt, implement, maintain, and use the identified technologies; and

(ii) Set forth a prioritized implementation schedule for the development, adoption, implementation and maintenance of those technologies over a 10-year period.

(5) Except as required by subpart I of part 236 of this chapter, if a railroad decides to implement a positive train control system as part of its technology analysis and implementation plan, the railroad shall set forth and comply with a schedule for implementation of the positive train control system consistent with the deadlines in the Positive Train Control Enforcement and Implementation Act of 2015, Public Law 114-73, 129 Stat. 576-82 (Oct. 29, 2015), and 49 CFR 236.1005(b)(7).

(6) The railroad shall not include in its SSP plan the analysis conducted pursuant to paragraph (r)(3) of this section. The railroad shall make the results of any analysis conducted pursuant to paragraph (r)(3) of this section available upon request to representatives of FRA and States participating under part 212 of this chapter.

(s) *Safety Assurance*—(1) *Change management*. Each railroad shall establish and set forth a statement in its SSP plan describing the processes and procedures used by the railroad to manage significant operational changes, system extensions, system modifications, or other significant changes that will have a direct impact on railroad safety.

(2) *Configuration management*. Each railroad shall establish a configuration management program and describe the

program in its SSP plan. The configuration management program shall—

(i) Identify who within the railroad has authority to make configuration changes;

(ii) Establish processes to make configuration changes to the railroad's system; and

(iii) Establish processes to ensure that all departments of the railroad affected by the configuration changes are formally notified and approve of the change.

(3) *Safety certification*. Each railroad shall establish and set forth a statement in its SSP plan that describes the certification process used by the railroad to help ensure that safety concerns and hazards are adequately addressed before the initiation of operations or major projects to extend, rehabilitate, or modify an existing system or replace vehicles and equipment.

(t) *Safety culture*. A railroad shall set forth a statement in its SSP plan that describes how it measures the success of its safety culture identified in paragraph (b)(2) of this section.

§ 270.105 Discovery and admission as evidence of certain information.

(a) *Protected information*. Any information compiled or collected after August 14, 2017, solely for the purpose of planning, implementing, or evaluating a system safety program under this part shall not be subject to discovery, admitted into evidence, or considered for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage. For purposes of this section—

(1) “Information” includes plans, reports, documents, surveys, schedules, lists, or data, and specifically includes a railroad's analysis of its safety risks under § 270.103(q)(1) and a railroad's statement of mitigation measures under § 270.103(q)(2); and

(2) “Solely” means that a railroad originally compiled or collected the information for the exclusive purpose of planning, implementing, or evaluating a system safety program under this part. Information compiled or collected for any other purpose is not protected, even if the railroad also uses that information for a system safety program.

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“Solely” also means that a railroad continues to use that information only for its system safety program. If a railroad subsequently uses for any other purpose information that was initially compiled or collected for a system safety program, this section does not protect that information to the extent that it is used for the non-system safety program purpose. The use of that information within the railroad’s system safety program, however, remains protected. This section does not protect information that is required to be compiled or collected pursuant to any other provision of law or regulation.

(b) *Non-protected information.* This section does not affect the discovery, admissibility, or consideration for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage of information compiled or collected for a purpose other than that specifically identified in paragraph (a) of this section. Such information shall continue to be discoverable, admissible, or considered for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage if it was discoverable, admissible, or considered for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage on or before August 14, 2017. Specifically, the types of information not affected by this section include:

(1) Information compiled or collected on or before August 14, 2017;

(2) Information compiled or collected on or before August 14, 2017, and that continues to be compiled or collected, even if used to plan, implement, or evaluate a railroad’s system safety program; or

(3) Information that is compiled or collected after August 14, 2017, and is compiled or collected for a purpose other than that identified in paragraph (a) of this section.

(c) *Information protected by other law or regulation.* Nothing in this section shall affect or abridge in any way any other protection of information provided by another provision of law or regulation. Any such provision of law

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or regulation applies independently of the protections provided by this section.

(d) *Preemption.* To the extent that State discovery rules and sunshine laws would require disclosure of information protected by this section in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage, those rules and laws are preempted.

§ 270.107 Consultation requirements.

(a) *General duty.* (1) Each railroad required to establish a system safety program under this part shall in good faith consult with, and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit labor organization representing a class or craft of directly affected employees, on the contents of the SSP plan.

(2) A railroad that consults with such a non-profit employee labor organization as required by paragraph (a)(1) of this section is considered to have consulted with the directly affected employees represented by that organization. If a railroad contracts out significant portions of its operations, the contractor and the contractor’s employees performing the railroad’s operations shall be considered directly affected employees for the purposes of this part.

(3) A railroad shall have a preliminary meeting with its directly affected employees to discuss how the consultation process will proceed. A railroad is not required to discuss the substance of a SSP plan during this preliminary meeting. A railroad must:

(i) Hold the preliminary meeting no later than April 10, 2017; and

(ii) Notify the directly affected employees of the preliminary meeting no less than 60 days before it is held.

(4) Appendix B to this part contains non-mandatory guidance on how a railroad may comply with the requirements of this section.

(b) *Railroad consultation statements.* A railroad required to submit a SSP plan under § 270.201 must also submit, together with the plan, a consultation statement that includes the following information: